

Case 1:17-cv-05273-ILG-JO

**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.

★ OCT 02 2018 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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XAVIER PETTIFORD,

Plaintiff,

-against-

CITY OF NEW YORK, DETECTIVE PATRICK  
FITZSIMONS, DETECTIVE ERIC RYAN, and  
DETECTIVE JASON ZUMMO,

Defendants.

**STIPULATION AND  
ORDER OF  
SETTLEMENT OF  
ATTORNEY'S FEES,  
EXPENSES, AND  
COSTS**

17-CV-5273 (ILG) (JO)

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**WHEREAS**, plaintiff Xavier Pettiford commenced this action by filing a complaint on or about September 8, 2017, alleging that defendants City of New York, Detective Patrick Fitzsimons, Detective Eric Ryan, and Detective Jason Zummo violated his federal civil and state common law rights; and

**WHEREAS**, defendants served plaintiff with an Offer of Judgment pursuant to Fed. R. Civ. P. 68 on July 19, 2018; and

**WHEREAS**, plaintiff accepted defendants' Offer of Judgment on July 20, 2018; and

**WHEREAS**, all defendants deny any and all liability arising out of plaintiff's allegations; and

**WHEREAS**, plaintiff's counsel represents that plaintiff has assigned all of his rights to attorneys' fees, expenses, and costs to Bernstein Clarke & Moskovitz PLLC; and

**WHEREAS**, counsel for defendants and counsel for plaintiff now desire to resolve the issue of attorneys' fees, expenses, and costs without further proceedings;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, the attorneys of record for the respective parties to the above-captioned

action, as follows:

1. Defendant City of New York hereby agrees to pay Bernstein Clarke & Moskovitz PLLC, the total sum of One Hundred Thirty Thousand (\$130,000.00) Dollars within forty-five (45) days that this stipulation and accompanying general releases are executed and returned to defendants' counsel, in full satisfaction of plaintiff's claims for attorneys' fees, expenses, and costs. In consideration for the payment of One Hundred Thirty Thousand (\$130,000.00) Dollars, counsel for plaintiff agrees to release and discharge defendants City of New York, Detective Fitzsimons, Detective Ryan and Detective Zummo; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all claims of attorneys' fees, expenses, and costs that were or could have been alleged in the aforementioned action.

2. Counsel for plaintiff hereby agrees and represents that no other claims for attorneys' fees, expenses, or costs arising out of this action shall be made by or on behalf of plaintiff in any application for attorneys' fees, expenses, or costs at any time.

3. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiffs rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

4. This Stipulation and Order contains all the terms and conditions agreed upon

by counsel for defendants and counsels for plaintiff hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of attorneys' fees, expenses, or costs shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

BERNSTEIN CLARKE & MOSKOVITZ  
PLLC  
*Attorneys for Plaintiff*  
11 Park Avenue, Suite 914  
New York, NY 10007

By: 

Joshua Moskowitz  
*Attorney for Plaintiff*

Dated: New York, New York  
9-27, 2018

ZACHARY W. CARTER  
Corporation Counsel of the  
City of New York  
*Attorney for Defendants City of New York,*  
*Fitzsimons, Ryan, and Zummo*  
100 Church Street, 3<sup>rd</sup> Floor  
New York, New York 10007

By: 

Evan Brustein  
*Senior Counsel*

SO ORDERED:

s/l. Leo Glasser, USDJ  
HON. I. LEO GLASSER  
UNITED STATES DISTRICT JUDGE